



U.S. Department of Justice

Environment and Natural Resources Division

BSG:AML  
DJ No. 90-11-3-1620/2

Environmental Enforcement Section  
P.O. Box 7611 Telephone: (202) 514-4213  
Washington, D.C. 20044-7611 Facsimile: (202) 616-6584

November 14, 2002

**VIA FEDERAL EXPRESS**

Clerk's Office  
United States District Court for the Southern District of Ohio  
Rm. 324  
Potter Stewart Courthouse  
100 E. 5<sup>th</sup> St.  
Cincinnati, OH 45202

EPA Region 5 Records Ctr.



274475

Re: Dow Chemical, et al. v. Acme Wrecking et al.  
Dow Chemical, et al. v. Sun Oil Co., et al.  
United States v. Aeronca, Inc. et al.  
Consolidated Civil Action Nos. C-1-97-0307; C-1-97-0308; C-1-01-439

Dear Clerk:

Enclosed for filing please find the original and two copies of a Joint Motion of the United States of America, Contribution Plaintiffs, and Defendant Whitton Container, Inc. to Continue to Stay all Discovery Deadlines as to Defendant Whitton Container, Inc. until February 1, 2003. If you could please return one filed-stamped copy of each document in the enclosed, self-addressed, stamped envelope, I would appreciate it.

Thank you for your prompt attention to this matter.

Sincerely,

Annette M. Lang  
Trial Attorney

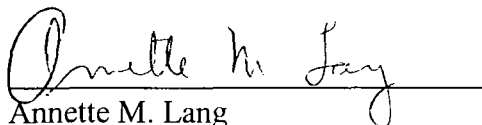
cc: All Counsel on the Service List  
Craig Melodia

<b>THE DOW CHEMICAL CO., et al.,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Civil Action Nos.</b>
	)	<b>C-1-97-0307; C-1-97-0308; C-1-01-439</b>
<b>ACME WRECKING CO., INC., et al.,</b>	)	<b>(Consolidated Actions)</b>
	)	
<b>Defendants.</b>	)	
	)	
<hr/>		
<b>THE DOW CHEMICAL CO., et al.,</b>	)	<b>Judge Weber</b>
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>JOINT MOTION OF THE</b>
	)	<b>UNITED STATES OF AMERICA,</b>
<b>SUN OIL COMPANY, et al.</b>	)	<b>CONTRIBUTION PLAINTIFFS,</b>
	)	<b>AND DEFENDANT WHITTON</b>
	)	<b>CONTAINER, INC. TO CONTINUE</b>
	)	<b>TO STAY ALL</b>
<b>Defendants.</b>	)	<b>DISCOVERY DEADLINES AS TO</b>
	)	<b>DEFENDANT WHITTON</b>
<hr/>		
<b>UNITED STATES OF AMERICA,</b>	)	<b>CONTAINER, INC. UNTIL</b>
	)	<b>FEBRUARY 1, 2003</b>
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	
	)	<b>MEMORANDUM IN SUPPORT</b>
<b>AERONCA, INC., et al.,</b>	)	<b>ATTACHED HERETO</b>
	)	
<b>Defendants.</b>	)	
	)	

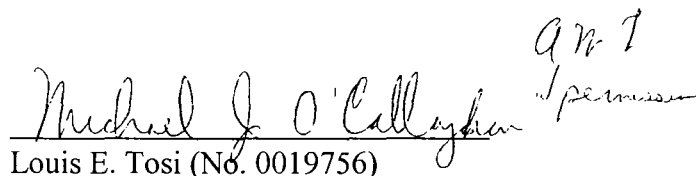
Plaintiff the United States of America (“United States”), Contribution Plaintiffs (“Contribution Plaintiffs”), and Defendant Whitton Container, Inc. (“Whitton”) bring this Joint Motion before the Court requesting a continuation of the stay of all discovery as to Whitton. On August 15, 2002, this Court granted the parties’ Joint Motion to Stay all discovery until December 1, 2002. For the reasons set forth in the accompanying Memorandum in Support, the

United States, the Contribution Plaintiffs, and Whitton all agree that continuing the stay for another two months pending ongoing settlement negotiations is justified.

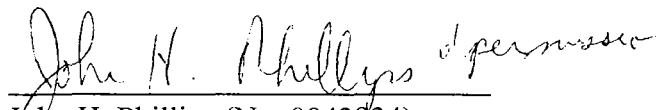
Respectfully submitted,



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Counsel for the United States  
Phone: 202 514-4213

 *q n 1*  
*per mission*

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THE DOW CHEMICAL CO., et al.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action Nos.
	)	C-1-97-0307; C-1-97-0308; C-1-01-439
ACME WRECKING CO., INC., et al.,	)	(Consolidated Actions)
	)	
Defendants.	)	
	)	
THE DOW CHEMICAL CO., et al.,	)	Judge Weber
	)	
Plaintiffs,	)	
	)	
v.	)	JOINT MEMORANDUM OF THE
	)	UNITED STATES OF AMERICA,
SUN OIL COMPANY, et al.	)	CONTRIBUTION PLAINTIFFS,
	)	AND DEFENDANT WHITTON
	)	CONTAINER, INC. TO CONTINUE
	)	TO STAY ALL
Defendants.	)	DISCOVERY DEADLINES AS TO
	)	DEFENDANT WHITTON
UNITED STATES OF AMERICA,	)	CONTAINER, INC. UNTIL
	)	FEBRUARY 1, 2003
Plaintiff,	)	
	)	
v.	)	
	)	
AERONCA, INC., et al.,	)	
	)	
Defendants.	)	
	)	

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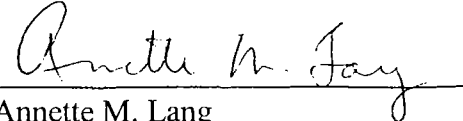
Whitton admits to having transported material to the Skinner landfill, but denies that it transported hazardous substances resulting in response costs to either the United States or to the Contribution Plaintiffs in this case.

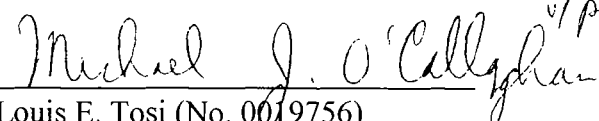
The United States, the Contribution Plaintiffs, and Whitton (the “Parties to this Motion”) have entered into settlement negotiations to settle this matter. These discussions started over six months ago and have been ongoing because they involve Whitton’s claim of a “limited ability to pay” the demand made by the United States and the Contribution Plaintiffs. The Parties to this Motion jointly agree that settling this matter and avoiding the costs associated with litigation is the appropriate course of action given the issues raised by Whitton’s claim of a limited ability to pay. This Court previously granted a Joint Motion to Stay Discovery as to Whitton until December 1, 2002. At the time of that Joint Motion, it appeared that an additional three months would be sufficient to come to a resolution of this matter. It now appears, however, that an additional two months is necessary. In the event that the Parties to this Motion are unable to come to a settlement agreement, the United States and the Contribution Plaintiffs will seek to restart discovery as to Whitton on February 1, 2003. By no later than January 15, 2003, the Parties to this Motion will file a revised discovery schedule as to Whitton if settlement negotiations fall through. Because no trial date in this action has been set, the Parties to this Motion anticipate that such a revised discovery schedule will not interfere with the progress of this case.

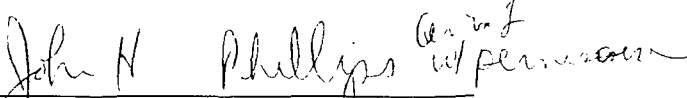
Accordingly, the United States of America, the Contribution Plaintiffs, and Whitton

respectfully request that the Court grant this Joint Motion extending the discovery deadline until February 1, 2003, by signing the proposed Order attached hereto.

Respectfully submitted,

  
Annette M. Lang  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

<b>THE DOW CHEMICAL CO., et al.,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Civil Action Nos.</b>
	)	<b>C-1-97-0307; C-1-97-0308; C-1-01-439</b>
<b>ACME WRECKING CO., INC., et al.,</b>	)	<b>(Consolidated Actions)</b>
	)	
<b>Defendants.</b>	)	
	)	
<b>THE DOW CHEMICAL CO., et al.,</b>	)	<b>Judge Weber</b>
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>SUN OIL COMPANY, et al.</b>	)	
	)	
	)	
<b>Defendants.</b>	)	
	)	
<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>AERONCA, INC., et al.,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

**ORDER**

This Court, having duly considered the Joint Motion of the United States, the Contribution Plaintiffs, and Whitton Container, Inc. to Stay all Discovery Deadlines as to Defendant Whitton Container, Inc, until February 1, 2003, ("Joint Motion") finds good cause for such Joint Motion and hereby Orders as follows:

1. The Joint Motion is GRANTED;
2. Discovery as to Defendant Whitton Container, Inc. is hereby stayed until February 1, 2003, pending settlement negotiations;
3. If the United States, the Contribution Plaintiffs, and Defendant Whitton Container, Inc. do not achieve a settlement by January 15, 2003, then, on that day, those parties shall file a revised discovery schedule with this Court.

So ORDERED this \_\_\_\_\_ day of \_\_\_\_\_ 2002.

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Judge Weber  
United States District Judge



**CERTIFICATE OF SERVICE**

I hereby certify that on this 14<sup>th</sup> day of November 2002, I caused a true copy of the foregoing **JOINT MOTION OF THE UNITED STATES, THE CONTRIBUTION PLAINTIFFS, DEFENDANT WHITTON CONTAINER, INC. TO CONTINUE TO STAY ALL DISCOVERY DEADLINES AS TO DEFENDANT WHITTON CONTAINER, INC. UNTIL FEBRUARY 1, 2003**, to be served by first-class mail, postage prepaid upon the following counsel of record:

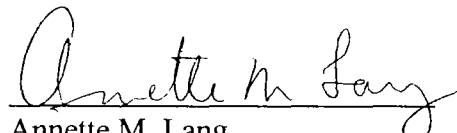
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